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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,871	08/02/2001	Robert L. Rykhus JR.	687-437	5424

7590 09/16/2003

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EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/920,871

Applicant(s)

RYKHUS ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communicati n appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 26-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25, 50 and 51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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Claims 26-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 8. The mere phrase "with traverse" on page 1 of the election is not a proper traverse.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 8, 9, 16, 18, 19 and 51 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hogan (6,569,191). Hogan discloses a bioabsorbable self-expanding stent (col. 5, lines 50-66) comprising a cylindrical sleeve (e.g. 21) including a latticed network formed from a plurality of monofilaments 22, 26 braided in an alternating braid pattern (col. 5, lines 49-50) which comprise at least one biocompatible polymer (col. 2, lines 46-67), said cylindrical sleeve having a limited in vivo lifetime (since it is bioabsorbable) which is controllable as indicated in col. 3, lines 20-23. Further, the in vivo lifetime is inherently "controllable" as claimed since it is controlled or determined at the time of manufacture by factors such as the size of the sleeve, the specific choice of bioabsorbable material, whether or not it is exposed to gamma radiation (and how much), noting that the Hogan stent is inherently capable of being exposed to gamma radiation.

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Alternatively, it would have been obvious that the Hagan in vivo lifetime is controllable for these reasons. As to claim 19, Hogan discloses polydioxanone in col. 2, line 58.

Claims 2, 3, 10, 11, 17 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan (6,569,191). As to claims 2, 3, 10, 11, and 17, Hogan fails to disclose the specific number of monofilaments claimed. However, it was well known in this art to use a large number of filaments for a stent and to choose a number which optimizes the desired expansion force and size of the stent. It would have been obvious to use the specific number of monofilaments claimed for the Hogan stent so that it would have these advantages. As to claims 20-23 and 25, Hogan fails to disclose the specific diameter claimed. However, it was well known in this art to size stents as with the specific diameter claimed so that it fits a correspondingly sized blood vessel. It would have been obvious to size the Hogan stent as claimed so that it would have this advantage.

Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan (6,569,191) in view of Amstrup (5,476, 508). Hogan fails to disclose a single strand shift in the braid. However, Amstrup teaches that braiding in a stent should include a single strand shift (at 12) in order to interlock the weave and

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apparently guarantee a stable crossing region which can accept large restoring forces (col. 4, lines 7-21). It would have been obvious to include a single strand shift in the Hogan braid so that it too would have this advantage.

Claims 5-7 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan (6,569,191) in view of Thompson et al. (5,957,974). Hogan fails to disclose the claimed braid angle. However, Thompson et al. teach that the braid angle for a self-expanding stent should be 60-150 and preferably 90-100 degrees (col. 7, lines 21-22) apparently in order to optimize the amount of shortening (col. 7, lines 24-35). It would have been obvious to use this braid angle in the Hogan braid so that it too would have this advantage.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan (6,569,191) in view of Turnlund et al. (5,629,077). Hogan fails to disclose an under-two-over-two braid pattern. However, Turnlund et al. teach that the braid pattern for a stent should be under-two-over-two (col. 5, lines 54-56) apparently in order to obtain the desired strength of the mesh (col. 6, lines 6-9). It would have been obvious to use this braid pattern in the Hogan stent so that it too would have this advantage.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
September 8, 2003



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731